

MINUTES
KENTUCKY BOARD OF PHARMACY
23 Millcreek Park
Frankfort, Kentucky
October 8, 2003

CALL TO ORDER: A regular meeting of the Kentucky Board of Pharmacy was held at the Board office, 23 Millcreek Park, in Frankfort, Kentucky. President Jones called the meeting to order at 9:00 a.m.

Members present: Georgina Kindall Jones, Tim Armstrong, Joe Carr, Becky Cooper, Mark Edwards, and Patricia Thornbury. Staff present: Michael A. Moné, Executive Director; Jeffrey L. Osman, Pharmacy Inspections and Investigations Coordinator; Katie Busroe, Maxine Snively, and Philip C. Losch, Pharmacy and Drug Inspectors; Cheryl Lalonde-Mooney, Assistant Attorney General and Board Counsel; and Shannon Settles, Executive Secretary. Guests: Danna Droz; Brian Fingerson, Pharmacist Recovery Network; Ralph Bouvette, APSC; Nancy Horn, APSC; J.D. Hammond, APSC; Greg Naseman, CVS; Paula York, Drug Control; and Brenda Burnett and Tracy Greenwell, University of Kentucky College of Pharmacy intern students. Juanita Toole, Court Reporter, recorded the meeting.

APPEARANCES: **Cardinal Health/Gary Cacciatore.** The Board reviewed correspondence regarding hospitals being allowed to transmit medication orders to an off-site Pharmacy Service Center where pharmacist can review, enter, and approve the orders during times the pharmacy is closed. After a brief discussion, Mr. Carr moved to approve the request as long as the individual pharmacist is licensed in Kentucky and posts their license in their working facility. Mr. Edwards seconded and the motion passed unanimously.

American Cancer Society/Cindy Adams. The Board reviewed correspondence regarding amending KAR 201:240 to allow those entities to accept unused, unopened drugs from health facilities where the drugs have been under the supervision of a health care provider. After a brief discussion, Mr. Carr moved to review the information at the Board retreat. Mr. Edwards seconded and the motion passed unanimously.

Colin Bayliss. The Board reviewed correspondence regarding Mr. Bayliss obtaining licensure in Kentucky. After a brief discussion, Ms. Thornbury moved to allow Mr. Bayliss licensure with conditions in Kentucky provided he completes the Kentucky Board of Pharmacy practical examination, NAPLEX, and the MPJE. Mr. Carr seconded and the motion passed. Mr. Armstrong opposed.

MINUTES: On motion by Mr. Carr, seconded by Ms. Thornbury and passed unanimously, the Minutes of September 23, 2003 were adopted.

BOARD REPORTS: **President.** President Jones welcomed Greg Naseman to the Board.

Executive Director. Mr. Moné was informed that there are approximately 12 University of Cincinnati students who intend to take our Board examination in June. However, their graduation

isn't until after the deadline for all materials to be submitted. Mr. Moné requested the Board to allow University of Cincinnati June 2004 Board examinees only an extension of time to file their certificate of graduation portion of their application only. All other forms must be filed by the deadline of May 21, 2004. Mr. Edwards moved to approve the request. Mr. Carr seconded and the motion passed unanimously.

Mr. Moné informed the Board that Tim Armstrong, Patricia Thornbury, and himself will be meeting with the P&T committee regarding tablet splitting on October 9th.

CURRENT/PENDING CASES: Mr. Carr moved for acceptance and entry of the proposed Agreed Orders as written. Mr. Edwards seconded and the motion passed unanimously. **Case No. 00-0132; Case No. 02-0104B; Case No. 02-0172; Case No. 03-0022A, Case No. 03-0074; Case No. 03-0129.**

Case Review Committee

Mr. Armstrong moved for acceptance of the Committee recommendation for the following case reports,

Case No. 03-0038. Pharmacist allegedly engaged in negligent and unprofessional conduct. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0073A. Pharmacy permit holder allegedly caused false records to be created, inaccurate records to be kept, and false information to be reported to KASPER. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0073B. Pharmacist allegedly engaged in unprofessional conduct by creating false records, keeping inaccurate records, causing false information to be reported to KASPER, and being impaired. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0077A. Pharmacy permit holder allegedly failed to renew permit in a timely manner but did not operate as a pharmacy. CRC recommendation: There is sufficient evidence of a violation, however, the penalty shall be the issuance of a Letter of Reprimand. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0077B. Pharmacy permit holder allegedly failed to renew permit in a timely manner but did not operate as a pharmacy. CRC recommendation: There is sufficient evidence of a violation, however, the penalty shall be the issuance of a Letter of Reprimand. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0077C. Pharmacy permit holder allegedly failed to renew permit in a timely manner but did not operate as a pharmacy. CRC recommendation: There is sufficient evidence of a violation, however, the penalty shall be the issuance of a Letter of Reprimand. Mr. Carr seconded

and the motion passed unanimously.

Case No. 03-0078. Special Medical Gas permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0079. Pharmacist allegedly engaged in unprofessional conduct by gaining unauthorized access to a patient's health care information for purposes other than providing patient care. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0080. Kentucky Board of Dentistry brought action against pharmacist/dentist for failing to maintain patient records, failing to document all prescriptions in dental records and by prescribing controlled substances when no dental treatment was noted in dental records. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0081. Pharmacist allegedly engaged in unprofessional conduct by refusing to fill a Scheduled II prescription. CRC recommendation: Case is dismissed. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0083. Pharmacy permit holder allegedly engaged in unprofessional conduct by not providing proper security of controlled substances. CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0084. Special Medical Gas permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0085. Special Medical Gas permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0086. Pharmacist allegedly had a large number of glass globes filled with prescription drugs, syringes, empty stock bottles, empty unlabeled prescription vials, and other pharmaceutical items in her apartment. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0087A. Pharmacy permit holder allegedly engaged in unprofessional conduct by having a policy in place that prevented a scheduled II prescription from being filled for the correct quantity prescribed. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0087B. Pharmacist-in-charge allegedly engaged in unprofessional conduct by having a

policy in place that prevented a scheduled II prescription from being filled for the correct quantity prescribed. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0087C. Pharmacist allegedly engaged in unprofessional conduct by not filling a scheduled II prescription for the quantity prescribed and not offering counseling on a new prescription. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0089. Special Medical Gas permit holder allegedly relocated without a prior inspection by the Board. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0090A. Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0090B. Pharmacist-in-charge allegedly failed to renew pharmacy permit in a timely manner and pharmacy continued to operate. CRC recommendation: Case is dismissed. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0091. Pharmacist allegedly failed to complete the required continuing education in 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0093. Pharmacist allegedly failed to complete the required continuing education in 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0095. Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0096. Special Medical Gas permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0101. Pharmacist allegedly failed to complete the required continuing education in 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0102. Pharmacist allegedly acted in an unprofessional manner by refusing to fill a prescription for nortriptyline and Lortab. CRC recommendation: Case is dismissed. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0104A. Pharmacy permit holder allegedly impeded the inspection process by failing to comply with the listed scheduled hours of operation on several occasions. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0104B. Pharmacist-in-charge allegedly impeded the inspection process by failing to comply with the listed scheduled hours of operation on several occasions. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0106. Pharmacist allegedly failed to complete the required continuing education in 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0107. Pharmacist allegedly engaged in unprofessional conduct by stealing prescription and over the counter items, filling or refilling prescriptions without the approval of the appropriate physician, and making inappropriate suggestive remarks to pharmacy employees. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0109. Pharmacist allegedly committed a Class D felony (receiving a stolen firearm) and a Class A misdemeanor (possession of a defaced firearm). CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0110. Pharmacist-in-charge allegedly filled an invalid scheduled II controlled substance prescription and failed to have pharmacist's license conspicuously displayed. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0111. Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0112. Special Medical Gas permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0113. Pharmacist allegedly obtained legend drugs including controlled substances without authorization from a licensed practitioner. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0114. Pharmacist allegedly failed to complete the required continuing education in 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0115. Pharmacist allegedly failed to complete the required continuing education in

2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0116. Pharmacist allegedly failed to complete the required continuing education in 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0117. Pharmacist allegedly failed to complete the required continuing education in 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0118. Pharmacist/doctor of osteopathic medicine had medical license revoked in the Commonwealth of Kentucky due to violations of controlled substances laws. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0119. Pharmacist allegedly violated previous Agreed Order. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0120. Pharmacist allegedly obtained legend drugs including controlled substances without authorization from a licensed practitioner. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0121. Wholesaler permit holder allegedly sold prescription veterinary medicines directly to farm producers in Kentucky. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0122A. Special medical gas permit holder allegedly failed to notify the Board office of a permanent closure in a timely manner. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0122B. Special medical gas consultant pharmacist allegedly failed to notify the Board office of a permanent closure in a timely manner. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Case No. 03-0124. Facility is allegedly operating a pharmacy without a pharmacy permit issued by the Board of Pharmacy. CRC recommendation for Complaint:Cease and Desist Order. Mr Carr seconded and the motion passed unanimously.

Case No. 03-0127. Special Medical Gas permit holder allegedly failed to renew permit in a timely manner and continued to operate. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Carr seconded and the motion passed unanimously.

Ms. Thornbury moved for acceptance of the Committee recommendation for the following med error case reports,

Case No. 03-0037A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0037B. Pharmacist allegedly engaged in unprofessional conduct by committing medication errors, routinely filling prescriptions without a prescriber's prescription, "refilling" C-II prescriptions 14 days too early, filling C-II prescriptions before receiving a valid prescription, not counseling, and not completing the required continuing education for 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0061A. Pharmacy permit holder allegedly sold misbranded products as a result of medication errors. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0061B. Pharmacist allegedly engaged in unprofessional conduct by committing medication errors. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0088A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0088B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0092A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0092B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0094A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0094B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0099A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0099B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0100A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0100B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0103A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation: Case is dismissed. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0103B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation: Case is dismissed. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0105A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0105B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0108A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0108B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0128A. Pharmacy permit holder allegedly sold a misbranded product as a result of a medication error. CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0128B. Pharmacist allegedly engaged in unprofessional conduct by committing a

medication error. CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

RECIPROCITY/RELICENSURE/INTERNSHIP:

Robert Nold. The Board reviewed Mr. Nold's request for reinstatement of his license. After brief discussion, Mr. Armstrong moved to reinstate Mr. Nold's license provided he completes the MPJE. Mr. Edwards seconded and the motion passed unanimously.

Dennis Clark Hubbard. The Board reviewed Mr. Hubbard's request for reciprocity. After a brief discussion, Mr. Edwards moved to allow Mr. Hubbard to proceed with the reciprocity process and obtain licensure after he completes the MPJE. Mr. Armstrong seconded and the motion passed unanimously.

CORRESPONDENCE: American Red Cross/Guy Stinson. The Board reviewed correspondence requesting clarification of state regulations regarding distribution of not-for-human-consumption samples. After a brief discussion, Ms. Thornbury moved to authorize Mr. Moné to draft a letter clarifying the regulation. Mr. Armstrong seconded and the motion passed unanimously.

PharmaStat/Bernie Gregorowicz. The Board reviewed correspondence requesting clarification of labeling of split tablet medications and the signing of oral schedule III, IV, and V controlled substance prescriptions by pharmacists. After a brief discussion, Mr. Edwards moved to allow the current procedures of labeling for split tablets by the pharmacy. On the second part of the question, Mr. Edwards expressed that oral prescriptions listed in schedule III, IV and V shall be immediately reduced to writing, dated, and signed by each responsible pharmacist. Mr. Carr seconded and the motion passed unanimously.

Luther Luckett Correctional/Doug Crall. The Board reviewed correspondence regarding Luther Luckett's protocol for dealing with emergency situations requiring the procurement of medications ordered by a licensed prescriber. After a brief discussion, Ms. Thornbury moved to place this on the agenda for the November retreat to be discussed. Ms. Cooper seconded and the motion passed unanimously.

Correctional Medical Services/Donna Carder-Kummer. The Board reviewed correspondence regarding CMS being in compliance with the statute. Ms. Thornbury moved to place this on the agenda for the November retreat to be discussed. Ms. Cooper seconded and the motion passed unanimously.

Total Pharmacy Care/Billy Rowe. The Board reviewed correspondence requesting permission to store all prescription registers and original hardcopy prescriptions greater than one year off site in a secure storage building. Ms. Thornbury moved to approve the request. Mr. Armstrong seconded and the motion passed unanimously.

Owensboro Medical Practice. The Board reviewed correspondence regarding pharmacists

switching the prescriber of a prescription from an ARNP to the physician. Ms. Thornbury moved to authorize Mr. Moné to draft a letter. Mr. Carr seconded and the motion passed unanimously.

Medix.resources inc/Irene Tam. The Board reviewed a questionnaire.

Daniel Thies. The Board reviewed Mr. Thies' community service lectures he performed pursuant to his Agreed Order.

Monette Wright. The Board reviewed Ms. Wright's community service project she completed pursuant to her Agreed Order.

Toyota Family Pharmacy. The Board reviewed correspondence requesting clarification of 201 KAR 2:070. Ms. Thornbury moved to authorize Mr. Moné to draft letter. Mr. Carr seconded and the motion passed unanimously.

CONTINUING EDUCATION: Mr. Edwards moved to accept the continuing education programs 03-34 through 03-36 as recommended. Mr. Carr seconded and the motion passed unanimously.

NEW BUSINESS: Mr. Carr moved to elect Mr. Armstrong as President of the Board to begin January 2004. Ms. Thornbury moved to re-elect Ms. Jones as President of the Board to begin January 2004. After a vote, Mr. Armstrong was elected as President of the Board for 2004. Mr. Carr moved to elect Mr. Edwards as President Elect for 2004. Ms. Cooper seconded and the motion passed unanimously.

ADJOURNMENT: On motion by Mr. Edwards and seconded by Mr. Carr and passed unanimously, President Jones adjourned the meeting at 1:30 p.m. The next regularly scheduled Board meeting is scheduled to begin at 9:00 a.m. on December 3, 2003.

Michael A. Moné, Executive Director

MINUTES APPROVED October 17, 2003.